

REMARKS

This Reply and Amendment is intended to be completely responsive to the Office Action dated September 30, 2003. Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 39-92 and 95-97 stand rejected. On entry of this Reply and Amendment, Claims 96 and 97 will be cancelled. TABLE 1 below provides the status of all claims under 37 C.F.R. § 1.173(c) and amendments relative to patent under 37 C.F.R. § 1.173(g). Accordingly, Claims 39-92 and 95 will be pending in this Reissue Application. The Examiner has previously indicated that, but for the informalities corrected herein, Claims 39-92 and 95 are allowable.

By this Reply and Amendment, the Applicants submit that Claims 39-92 and 95 meet the requirements of 37 C.F.R. §§ 1.121(h) and 1.173 and are in condition for allowance.

1. Numbering of Claims

In section A of the Office Action, the Examiner noted that the numbering of claims was not in accordance with 37 CFR 1.126. Particularly, the Examiner noted that newly added claims had been misnumbered as Claims 93 and 94, when the newly added claims should have been numbered as Claims 96 and 97. The Examiner further noted that Claims 96 and 97 should be canceled as being redundant to Claim 92. The Examiner stated:

Claims 93-94 were canceled within the January 3, 2002 Amendment upon their subject matter being incorporated in Claim 92. Claims 93-93 (and renumbered 96-97 -See above) submitted with the Petition to revive is obviously not intended and should be canceled in response to this action.

The Applicants apologize for the unintentional inclusion of Claims 96 and 97. Accordingly, the Applicants respectfully requests that renumbered Claims 96 and 97 be canceled without prejudice.

2. Defective Reissue Oath/Declaration

In section B of the Office Action, the Examiner rejected Claims 39-92 and 95-97 as being based upon a defective reissue declaration under 35 U.S.C. § 251 for not meeting the requirements of 37 C.F.R. 1.175. The Examiner stated:

The Declaration filed March 2, 2001 is not specific to an error of the original patent as suggested by 1414 MPEP . . . rendering the original patent partially or wholly invalid or inoperative.

Ms. Linda Sholl of the United States Patent and Trademark Office was consulted regarding this issue on February 26, 2004. In view of Ms. Sholl's comments, a new Reissue Declaration has been prepared and is enclosed herewith in Form PTO/SB/52. The Applicants submit that the Reissue Declaration satisfies the requirements of 37 C.F.R. 1.175(b)(1). Accordingly, reconsideration and withdrawal of the rejections of Claims 39-92 and 95 is respectfully requested. By the amendment herein, Claims 96 and 97 are no longer pending.

3. Written Consent of all Assignees

In section B of the Office Action, the Examiner objected to the application under 37 C.F.R. 1.172(a) as lacking the written consent of all assignees owning an undivided interest in the patent. The Examiner further objected to the application by noting that the assignee has not established its ownership interest in the patent for which reissue is being requested. The Examiner stated:

An examination of the 37 C.F.R. 3.73(b) Statement appears inconsistent in that establishment of the chain of title has not been established from Davis et al to Sussex Plastics, Inc. to Rexam Cosmetic Packaging. It is not clear that the person signing has a relationship to or from Sussex Plastics, Inc.

Enclosed with this Reply and Amendment is completed Form PTO/SB/53 to satisfy the requirements of 37 C.F.R. 1.172(a). Further enclosed herewith is completed Form PTO/SB/96 to satisfy the requirements of 37 C.F.R. 3.73(b). To support the assignee's claim of an ownership interest in the '486 patent, a copy of the previously filed Document Recordation has been provided herewith as Exhibit A. The documentation previously filed with the Document Recordation establishes that Sussex Plastics was merged with and into

Rexam Cosmetic Packaging Inc., and that Rexam Cosmetic Packaging Inc. later changed its name to Rexam Beauty and Closures Inc.

The Applicants submit that the completed Forms PTO/SB/53 and PTO/SB/96 satisfy the requirements of 37 C.F.R. 1.172(a) and 3.73(b). Accordingly, reconsideration and withdrawal of the objection to the application is respectfully requested.

4. Receipt of Original Patent, or a Statement as to Loss or Inaccessibility of Original

In section C of the Office Action, the Examiner noted that under 37 C.F.R. 1.178 the original patent, or a statement as to loss or inaccessibility of the original patent must be received before this reissue application can be allowed.

Accordingly, in accordance with 37 C.F.R. 1.178, the original patent for U.S. Pat. No. 5,842,486 is enclosed with this Reply and Amendment.

5. TABLE 1 showing the status of all claims under 37 C.F.R. § 1.173(c) and amendments relative to patent under 37 C.F.R. § 1.173(g).

TABLE 1

Claim(s)	Status	Corresponding claim in '486 patent	Exemplary Support for claim
1-38	Cancelled	N/A	N/A
39	New/Pending	1	Col. 3, ll. 44-47 and FIGURE 2
40	New/Pending	2	Claim 2 as originally presented
41	New/Pending	3	Claim 3 as originally presented
42	New/Pending	4	Claim 4 as originally presented
43	New/Pending	5	Claim 5 as originally presented
44	New/Pending	6	Claim 6 as originally presented
45	New/Pending	7	Claim 7 as originally presented
46	New/Pending	N/A	Col. 2, l. 67 through col. 4, l. 1
47	New/Pending	N/A	Col. 2, ll. 54-56
48	New/Pending	N/A	Col. 3, ll. 54-56
49	New/Pending	N/A	Col. 4, ll. 44-50
50	New/Pending	N/A	Col. 4, ll. 44-50
51	New/Pending	N/A	Col. 3, ll. 47-53
52	New/Pending	N/A	Col. 3, ll. 44-47
53	New/Pending	N/A	Col. 4, ll. 44-50
54	New/Pending	N/A	Col. 3, ll. 18-21 and FIGURE 2
55	New/Pending	N/A	Col. 5, ll. 29-31 and FIGURE 8
56	New/Pending	N/A	Col. 5, ll. 1-7 and FIGURE 7

Claim(s)	Status	Corresponding claim in '486 patent	Exemplary Support for claim
57	New/Pending	8	Claim 8 as originally presented; Col. 2, ll. 53-56; and FIGURE 2
58	New/Pending	9	Claim 9 as originally presented
59	New/Pending	10	Claim 10 as originally presented
60	New/Pending	11	Claim 11 as originally presented
61	New/Pending	12	Claim 12 as originally presented
62	New/Pending	13	Claim 13 as originally presented
63	New/Pending	N/A	Col. 3, ll. 44-46 and FIGURE 2
64	New/Pending	N/A	Col. 5, ll. 1-7 and FIGURE 7
65	New/Pending	N/A	Col. 3, ll. 44-46
66	New/Pending	N/A	Col. 2, ll. 54-56
67	New/Pending	N/A	Col. 2, ll. 54-56
68	New/Pending	N/A	Col. 3, ll. 44-46 and FIGURE 2
69	New/Pending	N/A	Col. 4, ll. 44-50
70	New/Pending	N/A	Col. 4, ll. 44-50
71	New/Pending	14	Claim 14 as originally presented
72	New/Pending	15	Claim 15 as originally presented
73	New/Pending	16	Claim 16 as originally presented
74	New/Pending	17	Claim 17 as originally presented
75	New/Pending	18	Claim 18 as originally presented
76	New/Pending	19	Claim 19 as originally presented; Col. 2, l. 21, Col. 3, ll. 66-67; and FIGURES 4 and 6
77	New/Pending	20	Claim 20 as originally presented
78	New/Pending	N/A	Col. 3, ll. 18-21 and FIGURE 2
79	New/Pending	N/A	Col. 3, ll. 44-46 and FIGURE 2
80	New/Pending	N/A	Col. 2, ll. 54-56
81	New/Pending	N/A	Col. 4, ll. 3-5 and FIGURE 2
82	New/Pending	N/A	Col. 2, ll. 54-56
83	New/Pending	N/A	Col. 4, ll. 44-50
84	New/Pending	N/A	Col. 4, ll. 44-50
85	New/Pending	N/A	Col. 5, ll. 47-57 and FIGURE 8
86	New/Pending	N/A	Col. 5, ll. 47-57 and FIGURE 8
87	New/Pending	N/A	Col. 5, ll. 29-30 and FIGURE 8
88	New/Pending	N/A	Col. 3, l. 65 through col. 4, l. 1
89	New/Pending	N/A	Col. 5, ll. 3-6 and FIGURE 7
90	New/Pending	N/A	Col. 5, ll. 3-6 and FIGURE 7
91	New/Pending	N/A	Col. 5, ll. 29-31 and FIGURE 8
92	New/Pending	N/A	Claim 1 as originally presented
93	New/Pending	N/A	Cancelled
94	New/Pending	N/A	Cancelled
95	New/Pending	N/A	Col. 3, l. 65 through col. 4, l. 1

Claim(s)	Status	Corresponding claim in '486 patent	Exemplary Support for claim
96	New/Pending	N/A	Cancelled
97	New/Pending	N/A	Cancelled

6. Conclusion

The Applicants believe that the present reissue application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

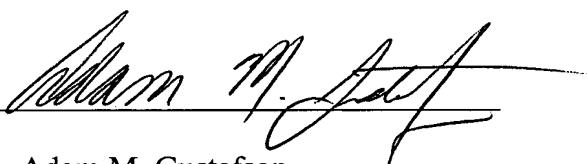
The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Should the Examiner have any questions or concerns regarding this application, Examiner is invited to contact the undersigned attorney.

Respectfully submitted,

Date 3/30/04

By



Adam M. Gustafson
Attorney for Applicant
Registration No. 54,601

FOLEY & LARDNER LLP
777 East Wisconsin Avenue, Suite 3800
Milwaukee, Wisconsin 53202-5306
Telephone: (414) 297-5652
Facsimile: (414) 297-4900